IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 23432 of 2004

Between:

S.A.Khader E-400559,
Badvel Depot, s/o Mohiuddin Saheb,
r/o Badwel, Kadapa District.

..... PETITIONER

AND

1 The Govt. of A.P., rep., by its Principal Secretary, Labour Employment Training & Factories Dept., A.P.Secretariat, Hyderabad.
2 The APSRTC rep., by its Regional Manager, Kadapa Region at Kadapa.
3 The APSRTC rep., by its Depot Manager, Badwel, Kadapa District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction, declaring the action of the respondents herein in imposing the punishment of reduction of basic pay by 5 incremental stages for a period of 2 years with cummulative effect vide Proc.No.02/2(14)/95-BDL, dt.13-3-1996, which was confirmed by the appellate and review authorities and now by the Govt. of A.P. in letter No.2652/Lab.1/A2/2002-1 dt.7-2-2003, as illegal, unjust, contrary to well established principles of law and as such liable to be set aside by further directing the respondents to refix the pay of the petitioner by adding the differed increments w.e.f. 13-3-1996 and to pay the arrears forthwith.

Counsel for the Petitioner: MR.S.M.SUBHAN

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent Nos.2 and 3: Mr.P.Vinayaka Swamy

The Court, at the admission stage, made the following :

-

-

-

-

ORAL ORDER:

This writ petition is directed against the Letter No.2652/Lab.1/A2/2002-1, dated 7.2.2003 issued by the 1st respondent in not referring the dispute for adjudication.

The petitioner said to have caused an accident on 24.9.1995. A regular enquiry was conducted and the disciplinary authority, accepting the domestic enquiry report, ordered reduction of basic pay of five incremental stages for two years having effect on future increments. The reviewing authority also confirmed the same. The conciliation authority referred the matter to Government of A.P. for referring the case to the Labour Court. The 1st respondent has no authority or right to deal with the case on the aspect of delay and the 1st respondent has to send the case to the Labour Court. Hence, this writ petition has been filed.

Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the material on record.

The learned counsel for the petitioner has contended that the 1st respondent has no power or authority to refuse to refer the case to the Labour Court on the ground of delay and therefore, the impugned letter suffers from legal infirmities.

On the other hand, the learned counsel for the respondents has contended that since there was a delay of four years, the dispute raised by the petitioner does not merit the reference for adjudication in the Labour Court and therefore, the 1st respondent rightly refused to refer the case. Hence, the order under challenge does not suffer

from any legal infirmities.

The factual matrix is not in dispute. A short point for consideration is whether the 1st respondent is entitled to refuse to refer the case to the Labour Court on the ground of delay?

Under Section 10 of the Industrial Dispute Act, 1947, where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing:

a. *refer to the dispute to a Board for promoting a settlement thereof; or*

b. *refer any matter appearing to the connected with or relevant to the dispute to a Court for enquiry; or*

c. *refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or*

d. *refer the dispute or any matter appearing to be connected with or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication.*

Section 10 does not prescribe any period of limitation for raising any dispute.

The learned counsel for the petitioner placed reliance on the decision reported in ***A.SESHAGIRI RAO Vs. GOVERNMENT OF A.P.*** wherein it is held as follows:

> *"The first respondent took the view that the punishment inflicted by the Management was to ensure discipline in the industry and if so, no reference is called for. It may however be noticed that the petitioner herein was inflicted with certain punishment, and to seek an adjudication whether the punishment so imposed by the Management was justified or not, the petitioner has a right to have the dispute referred to the Labour Court. The ground on which the respondent in this case refused to refer the matter for adjudication cannot be sustained."*

The learned counsel also placed reliance on the decision reported in

TELCO CONVOY DRIVERS MAZDOOR SANGH Vs. STATE OF BIHAR wherein it is held as under:

> *"It is now well settled that while exercising power under Section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act."*

There is no dispute about the above proposition of law since the Government cannot delve into the merits of the dispute and determine the *lis* whether it is a fit case to be referred to or not. But the point to be answered in this writ petition is whether the Government can decline to refer the matter to the Court on the ground of delay. On this aspect, the learned counsel for the petitioner relied upon a reported decision in ***AJAIB SINGH Vs. SIRHIND COOP. MARKETING-CUM-PROCESSING SERVICE SOCIETY LTD. w***herein, it is held to the following effect:

> *"No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal."*

In another decision reported in ***S.M.NILAJKAR Vs. TELECOM DISTRICT MANAGER*** their Lordships observed thus:

> *"It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true as held in Shalimar Works Ltd. V. Workmen that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefore. There is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is*

only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of most of the old workmen was held to be fatal in Shalimar Works Ltd. V. Workmen. In Nedungadi Bank Ltd. V. K.P.Madhavankutty a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In Ratan Chandra Sammanta v. Union of India it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants to any relief."

In the impugned proceedings, a decision was reported in ***SHALIMAR WORKS LIMITED Vs. ITS WORKMEN*** wherein it is held as follows:

"In the instant case the reference made after four years after the re-employment of most of the old workmen must be held to have been made beyond a reasonable time and the industrial tribunal ought not to grant the relief of reinstatement on such a reference."

So, from the above decisions, it is clear that though no limitation is prescribed under Section 10 of the Industrial Disputes Act, 1947, that does not mean a dispute can be raised at any time without regard to the delay. If the delay has resulted in material evidence for deciding the issue and that has been lost, it would certainly fatal and no other purpose would be served for referring the case to the Tribunal. Solely, based on citations of two decisions, one rendered by this Court and another by the Supreme Court, the 1st respondent came to the conclusion that the dispute raised by the petitioner did not merit the reference for adjudication as it was raised after a lapse of four years and 11 months. The charge sheet issued against the writ petitioner is for causing an accident. A criminal case was also filed in 1995 against the petitioner, who was acquitted by the learned Magistrate by the judgement, dated 31.12.1997. So, it is not a case of destroying any evidence due to lapse of time by the authorities

concerned. All the evidence would be available. Having considering the facts and circumstances of the case, the Government clearly erred in refusing the case only on the ground of delay. The facts and circumstances do not warrant refusal to refer the case to the Labour Court solely on the ground of delay.

For the foregoing reasons, I am of the considered view that the impugned letter suffers from legal infirmities and is liable to be set aside. Accordingly, the impugned letter, dated 7.2.2003 is set aside and the 1st respondent is directed to refer the dispute to the Tribunal as required under Section 10 of the Industrial Disputes Act, 1947.

In the result, the writ petition is allowed. In the circumstances of the case, there shall be no order as to costs.

_____

(K.C. BHANU, J.)

23rd December, 2004.

bcj

To

1 The Principal Secretary, The Govt. of A.P., Labour Employment Training &

Factories Dept., A.P. Secretariat, Hyderabad.
2 TheRegional Manager, The APSRTC, Kadapa Region at Kadapa.
3 The Depot Manager, The APSRTC, Badwel, Kadapa District.

4 Two C.Cs. to the Government Pleader for Labour, High Court Buildings, Hyderabad (OUT)

5 Two C.D. copies